

Ex parte Wang

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAW KAI WANG

Appeal No. 95-4888
Application 08/047,488¹

ON BRIEF

MAILED

OCT 30 1995

PAT.&T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Before CALVERT, LYDDANE and STAAB, Administrative Patent Judges.
LYDDANE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claim 13. Claims 1 through 12 and 14 through 20, which are the only other claims pending in the application, stand allowed.

The subject matter on appeal is directed to a land-based, consumable bivalve mollusk, fluidized bed production

¹ Application for patent filed April 19, 1993.

Appeal No. 95-4888
Application 08/047,488

facility. Claim 13 is exemplary of the invention and reads as follows:

—13. A land-based consumable bivalve mollusk fluidized bed production facility, comprising a vertical fluidized bed for cultivating and individually suspending mollusks to maturity, a source of shrimp pond water for feeding the mollusks, and a flow control means for regulating flow of shrimp pond water upward within the fluidized bed.

The reference of record relied upon by the examiner in a rejection of the claim under 35 USC § 103 is:

O'Sullivan et al (O'Sullivan) 4,589,370 May 20, 1986

Claim 13 stands rejected under 35 USC § 103 as being unpatentable over O'Sullivan. The examiner is of the view that O'Sullivan provides an oyster-containing tank with an inlet at the bottom through which a culture medium is pumped with an upward flow velocity sufficient to suspend the oysters in the manner claimed, but does not disclose the source of the culture medium as being shrimp pond water as claimed. However, the examiner considers the use of such shrimp pond water as the culture medium to have been obvious to one having ordinary skill in the art.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant, we refer to pages 2 through 4 of the examiner's answer, to pages 3 through 6 of the appellant's brief and to the appellant's reply brief for the full exposition thereof.

Appeal No. 95-4888
Application 08/047,488

OPINION

Our evaluation of the obviousness issues raised in this appeal has included a careful assessment of appellant's specification and claims, the applied prior art, and the respective positions advanced by the appellant and the examiner. With respect to the applied reference, we have considered all of the disclosure thereof for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 148 USPQ 507 (CCPA 1966). Additionally, we have taken into account not only the specific teachings of the reference, but also the inferences which one skilled in the art would have reasonably been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 159 USPQ 342 (CCPA 1968). On the basis of the knowledge and level of skill in the art at the time of appellant's invention, as reflected by the applied reference, it is our conclusion that the examiner's rejection of claim 13 under 35 USC § 103 is well founded. Our reasoning for this determination follows.

We have carefully considered each of the appellant's arguments for patentability, but we are not persuaded as to any error in the examiner's position. Contrary to the appellant's arguments, we agree with the examiner that the patent to O'Sullivan discloses the oyster production facility as comprising

Appeal No. 95-4888
Application 08/047,488

a vertical fluidized bed. As stated in column 2, lines 4 through 11,

[a]ccordingly the present invention provides a process of cultivating oysters wherein a bed of discrete oysters is placed in a vessel through which a stream of a culture medium is caused to flow upwardly and wherein the flow rate of said stream is at least that required for the oysters in the bed to be in a state of incipient suspension and is less than that which causes turbulent movement in the bed. [emphasis added]

It is further stated in column 3, lines 3 through 13, that

[i]f the flow rate of the culture medium up through a bed of discrete oysters which are dimensionally anisotropic, is varied from zero there is a range of flow rates at which incipient suspension occurs and the oysters tend to float with their surface of greatest cross-sectional area at right angles to the direction of flow. In this bed condition the pressure exerted by the upper oysters on the lower if the bed were static is reduced so that they are able to grow freely and the tendency to intergrowth which is exhibited by oysters when in contact with other oysters is reduced. [emphasis added]

It is our finding from the above that not only is the oyster bed fluidized as disclosed in O'Sullivan, but it is a "vertical fluidized bed" as claimed since there are at least some oysters above others as indicated in the above quote from column 3 of O'Sullivan. Furthermore, the production facility disclosed by O'Sullivan also includes a flow control means for control of the culture medium as noted in column 3, lines 32 through 36 thereof.

Appeal No. 95-4888
Application 08/047,488

Although we recognize that the culture medium of O'Sullivan is not disclosed as being from shrimp pond water, we note that algae-rich water is known in the art as a culture medium for the production of oysters (see appellant's discussion of prior art Figure 1 on pages 9 and 10 of appellant's specification as originally filed). It is our opinion that the artisan of ordinary skill would have found it obvious to utilize a known source of algae-rich culture medium, such as shrimp pond water, as the culture medium in the production facility of O'Sullivan. The question of obviousness cannot be approached on the basis that an artisan having ordinary skill would have known only what was read in the references, because such artisan must be presumed to know something about the art apart from what the references disclose. See In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). Further, a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. See In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Moreover, the law presumes skill on the part of the artisan rather than the converse. See In re Sovish, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985). Therefore, we shall sustain the examiner's rejection of appealed claim 13 under 35 USC § 103.

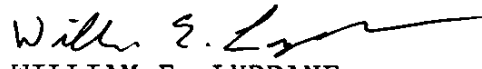
Appeal No. 95-4888
Application 08/047,488

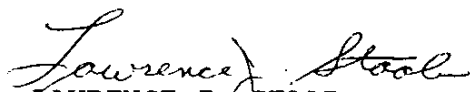
Accordingly, the decision of the examiner rejecting
claim 13 under 35 USC § 103 is affirmed.

No time period for taking any subsequent action in —
connection with this appeal may be extended under 37 CFR
1.136(a).

AFFIRMED


IAN A. CALVERT)
Administrative Patent Judge)


WILLIAM E. LYDDANE)
Administrative Patent Judge)


LAWRENCE J. STAAB)
Administrative Patent Judge)

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Appeal No. 95-4888
Application 08/047,488

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